

technical  
R E F E R E N C E  
document

DRAFT DRAFT DRAFT DRAFT  
**DRAFT**  
DRAFT DRAFT DRAFT DRAFT

# Environmental Management Standards

April 16, 1987

Prepared by: Siemon, Larsen, Mattlin & Purdy  
200 South Wacker Drive  
Chicago, IL 60606

The Draft Preliminary  
State  
Development  
AND  
Redevelopment  
Plan  
January 1988

## I. ENVIRONMENTAL MANAGEMENT STANDARDS

A. WATER QUALITY. In order to preserve and protect the quality of surface water and groundwater in the State of New Jersey and the natural resources of the State which are dependent on surface water and groundwater quality, it is necessary to impose limitations on the character, location and magnitude of growth and development in the State.

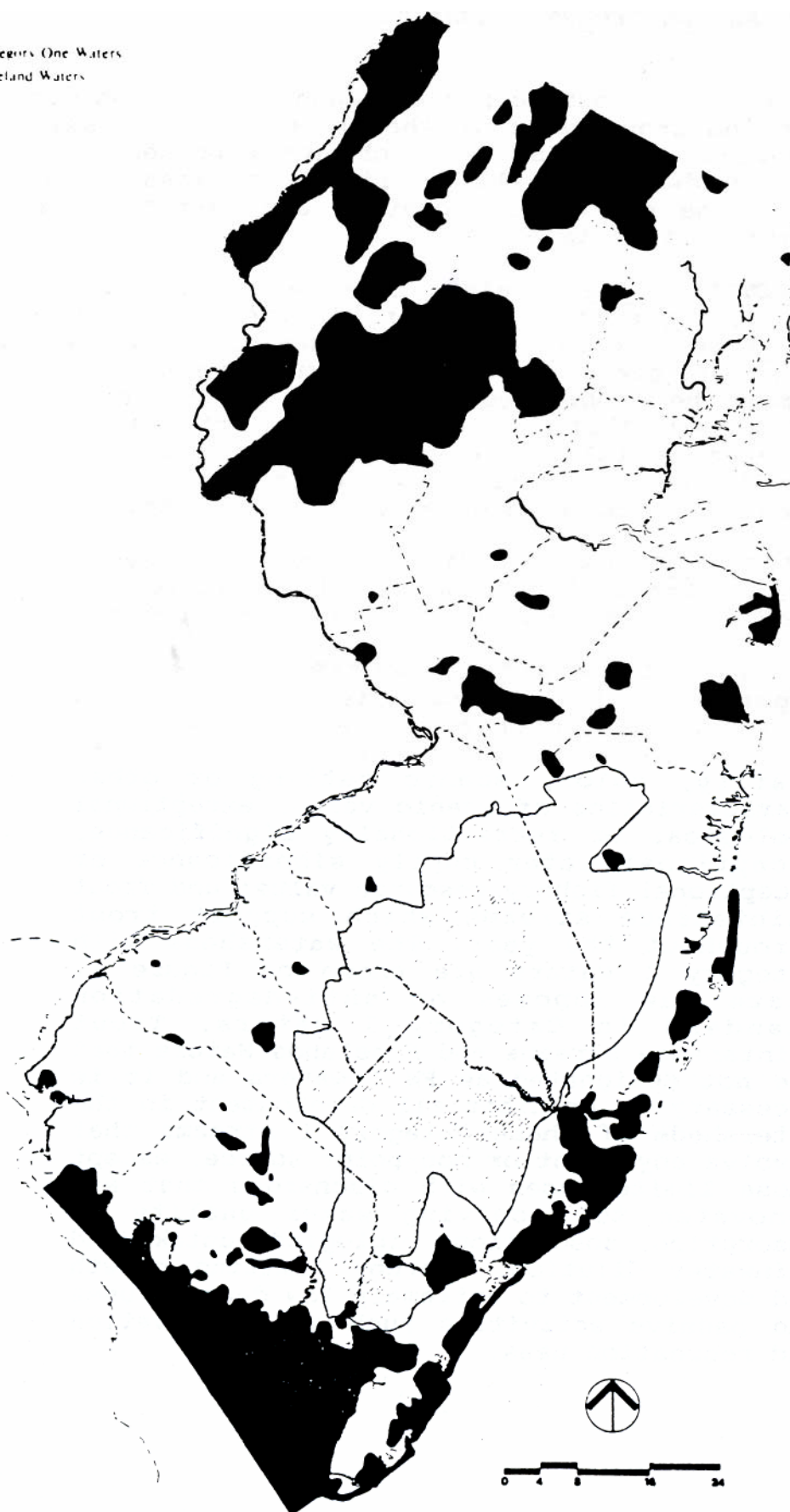
1. CHARACTER OF DEVELOPMENT. In order to preserve and protect the quality of water in the State of New Jersey, it is necessary that land uses that involve the discharge of toxic or hazardous materials into the environment be prohibited throughout the State. It is also necessary that use and disposal of potentially hazardous materials, including but not limited to household use, be strictly controlled to avoid contamination of surface water and groundwater.

2. LOCATION OF DEVELOPMENT. The type of development that is located within a watershed is critical to the impact of growth and development on water quality.

a) ANTI-DEGRADATION WATERSHEDS. The Department of Environmental Protection has designated a number of streams in the State as Category 1 waters because of their clarity, color, scenic setting or other characteristics of scenic value, exceptional ecological or recreationally significance, exceptional water supply significance or exceptional fishery resource value; and Trout maintenance streams which support trout throughout the year. The watersheds with Category 1 waters are shown on Figure 1. State law imposes an anti-degradation standard .in Category 1 waters, Trout Maintenance Streams and Pinelands Waters that are not designated as FW 1 waters and it is necessary to prohibit all development in the watersheds of these Category 1 streams that involve any point or non-point source, except those limited uses with discharges that are renovated to receiving water quality by adsorption, absorption, biological uptake and rainwater dilution, thereby limiting growth and development to extremely low density uses and passive activities such as conservation and recreation uses.

## Surface Water Quality

- Category One Waters
- Pineland Waters



**Figure 1**

b) SURFACE WATER BODY BUFFERS. The dilution model that describes the amount of development that can be accommodated in a watershed without exceeding water quality standards assumes that wastewater discharges will meet water quality standards at the point the discharge exits the parcel of land that is being developed, whether by surface water or groundwater movement. Therefore it is essential that all discharge points be set back a sufficient distance from property lines and other parcels of land and or surface bodies of water to ensure that the adsorptive, absorptive, chemical, biological and hydrologic factors bind, convert or dilute all discharges to meet the nitrate ( $\text{NO}_3$ ) water quality indicator standard prior to reaching any surface water body. No development or uses such as waste disposal areas and storage tanks shall be permitted within 300 feet of any surface body of water that involves the use of hazardous or toxic materials including radioactive wastes or petroleum products.

i) 300 FOOT SETBACK FROM SURFACE WATER BODIES USED AS A POTABLE WATER SOURCE. No development other than water dependent structures such as docks, piers and walkways that do not involve point or non-point discharges, shall be located within 300 feet of any surface body of water, including intermittent and perpetual streams, that is used as a potable water source or is located within the Conservation and Open Space Area.

ii) 200 FOOT SETBACK FROM SURFACE WATER BODIES, WETLANDS AND STREAMS THAT ARE TRIBUTARY TO POTABLE WATER SOURCES. No development other than water dependent structures, such as docks, piers and walkways that do not involve point or non-point discharges, shall be located within 200 feet of any stream that is tributary to a potable water source unless the applicant can demonstrate that the nature of the

proposed development or the utilization of special management techniques will ensure that water leaving the parcel proposed for development or entering a surface body of water meets the minimum standards for NO<sub>3</sub> established for the watershed in which the development is located.

iii) 100 FOOT MINIMUM SETBACK FROM ALL SURFACE WATER BODIES. In no case shall any development other than water-dependent structures, such as docks, piers and walkways, be located any closer than 100 feet to any surface body of water.

iv) VEGETATED BUFFERS. All areas located within required buffers shall be vegetated with native vegetation.

c) TROUT WATERSHEDS. Trout are a highly prized game fish that require high-quality, cool, clear, oxygen-rich stream waters. In order to preserve water for Trout production and maintenance, it is necessary that watersheds containing identified Trout production and maintenance streams be protected from point and non-point discharges that would elevate stream temperatures or depress dissolved oxygen. See Figure 2. Therefore no development shall be permitted in a Trout production or maintenance watershed that will result in the elevation of the water temperature or the depression of dissolved oxygen of a Trout stream.

d) AQUIFER RECHARGE AREAS. No development involving the use of hazardous or toxic materials, including the underground storage of petroleum products, shall be authorized in any aquifer recharge area that is designated by the Department of Environmental Protection agency as a part of an aquifer management program.

3. MAGNITUDE OF DEVELOPMENT. The State of New Jersey contains a number of streams that have been designated as Category 1 waters, that is high quality waters, and the watersheds in which these category streams are

## Trout Waters

- Trout Production
- ▨ Trout Maintenance Upstream Of Trout Production
- ▤ Trout Upstream Of Trout Production
- ▩ Trout Maintenance

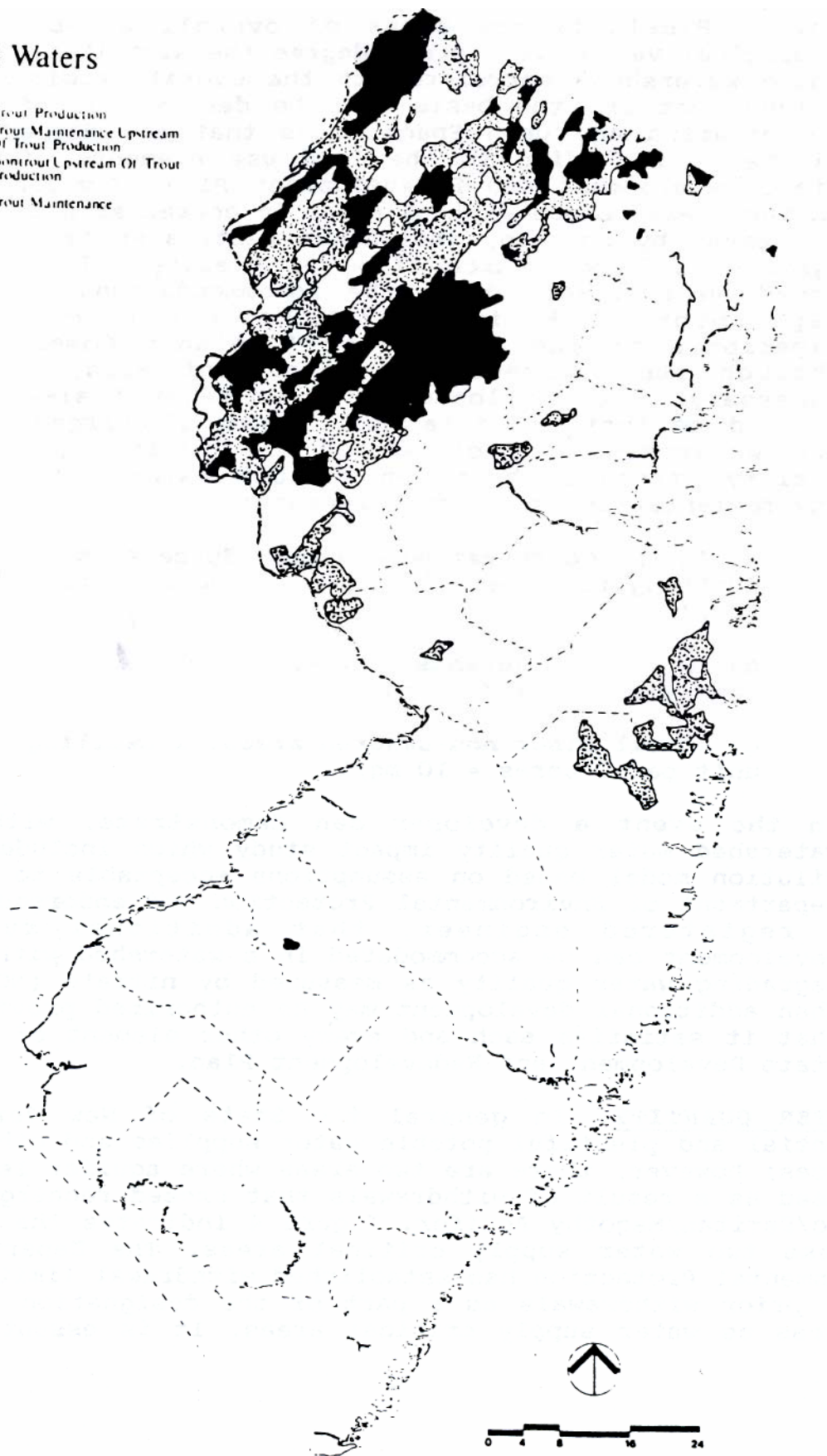


Figure 2

located, the watersheds in which Trout Maintenance streams are located and the watersheds of the New Jersey Pinelands are areas of overall exceptional ecological value. To a great degree the distribution of these watersheds correlates to the overall ecological values that are the basis for the designation of the Conservation and Open Space Areas that are mapped in Figure 3. According to the land use elements of the State Development and Redevelopment Plan, development in these watersheds will be rural in character and will be served by on-site, individual wastewater treatment systems, a known source of water quality pollutants. Based on available data, the recommendations of the Department of Environmental Protection and the experience of the New Jersey Pinelands Commission through its Comprehensive Management Plan, it is necessary that development in non-sewered areas be limited so that the total pollutants discharged into the watersheds do not exceed the following water quality standards based on potable water needs and environmental integrity requirements:

- a) In the Conservation and Open Space Area: 1 dwelling unit per 22 acres = 3 mg/1 nitrate ( $\text{NO}_3$ );
- b) In the Pinelands: Pinelands Commission densities = 2 mg/1; and
- c) In all other non-sewered areas: 1 dwelling unit per 2 acres = 10 mg/1.

In the event a developer can demonstrate, with a watershed water quality impact study which includes a dilution model based on assumptions acceptable to the Department of Environmental Protection and endorsed by a registered engineer, that additional rural development can be accommodated in a watershed without degrading water quality as measured by nitrate ( $\text{NO}_3$ ), then additional development may be authorized provided that it satisfies each and every other element of the State Development and Redevelopment Plan.

B. WATER QUANTITY. In general the State of New Jersey has substantial and plentiful potable water supplies and other water resources; however, there are two areas where aquifer levels are depressed as a result of withdrawals that exceed recharge in the Potomac/Raritan/Magothy Aquifer. Figure 4 indicates the location of these two water supply critical areas. The Department of Environmental Protection has established withdrawal limits of 35-50% of prior withdrawals as a part of the designation of these two areas as water supply critical areas. It is essential that



## Open Space Conservation Areas






-  Freshwater And Tidal Wetlands
-  Category I Watersheds, Trout Production Watersheds and Pineland Waters
-  Wildlife Restricted Areas
-  Unique Plant Species  
Areas of high frequency of  
occurrence of unique species
-  Trout Maintenance Watersheds



Figure 3



## General Water Resource Characteristics

- Aquifer Critical Area
- Aquifer Critical Area Margin
- Existing Water Supply Reservoir
- - - Major Watershed Boundary
- ~ Fall Line



Figure 4

all growth and development in these areas be designed, located and constructed so that recharge to ground water resources is not diminished and so that water withdrawals do not adversely affect the water budget for the designated water supply critical areas. All applications for development approval within designated water supply critical areas that involve water demand or usage of greater than 10,000 gpd shall include an Aquifer Impact Study (AIS) of the impact of the proposed development on the designated aquifer. If the Department of Environmental Protection, a regional commission with regulatory authority, or a county has prepared and are implementing specific development performance standards based on a area wide, region wide or countywide aquifer management program, no such impact study will be required. No development shall be authorized unless the Aquifer Impact Study demonstrates that the proposed development will not reduce recharge to groundwater or result in water withdrawals, individually or cumulatively, that exceed recharge to the water supply critical area or that the development is consistent with the development performance standards implemented as a part of an area wide, region wide or countywide aquifer management program.

C. AIR QUALITY. New Jersey has a serious air quality problem--the State is in a non-attainment status in regard to ozone. In order to accommodate future growth and development, New Jersey must reduce existing levels of ozone in the atmosphere and ensure that new growth and development does not exceed National Ambient Air Quality Standards, a difficult challenge because motor vehicle emissions are a major source of ozone and emission controls have a limited capability to reduce ozone emissions. Vehicle emissions relate to numbers of trips, trip lengths, and travel speeds (time) and the form of future development, in terms of location, mix and intensity, will have a significant effect on the State's ability to meet its air quality objectives.

1. LAND USE PATTERNS ENCOURAGED. In order to meet the State's air quality goals, it is necessary that all applications for development approval be considered in regard to the extent to which the pattern of future land use encourages:

- a) reliance on mass transit;
- b) pedestrian trips;
- c) van pooling and other shared transit programs;
- d) job and shopping opportunities in the vicinity of existing residential uses;
- e) residential uses in the vicinity of existing job and shopping opportunities;

f) large scale, mixed use developments with a full array of job, shopping and residential opportunities in a single community;

g) infill development and redevelopment in urban areas; and

h) development in the vicinity of mass transit stations.

2. DEVELOPMENT SUBJECT TO AIR QUALITY LIMITS. All development involving 100 or more employees or 50 or more dwelling units in areas other than Urban Centers and Older Suburbs shall be subject to an air quality review as a part of the development review process to measure the total additional ozone that will be generated by the proposed development and the impact of the development on local and statewide air quality

3. AIR QUALITY LIMITS ON DEVELOPMENT. No development shall be permitted in an area other than Urban Center Areas or Older Suburbs Areas unless the applicant has demonstrated a reduction in volatile organic substance emissions at a rate of 5 tons per year per proposed 100 employees or 50 dwelling units and the reduction is linked to the application for development; or the proposed development is designed, located or proposed to be served by alternative transportation systems such that the projected volatile organic substance emission is no greater than .5 tons per 100 employees or 50 dwelling units. The design, such as limited private vehicle parking spaces, the location, such as direct access to mass transit and alternative transportation systems such as van pooling shall be legally enforceable by any agency of government as a condition of development approval.

D. COASTAL ZONE RESOURCES. The coastal resources of the State of New Jersey represent an important commercial and recreational resource of the State.

1. CAFRA. The Coastal Area Facility Review Act of 1973 ("CAFRA") is generally regarded as responsive to the management needs of the coastal zone except for those developments that fall below the jurisdictional threshold for CAFRA. It is necessary and appropriate that the CAFRA standards be extended to all development in the coastal zone.

2. BARRIER ISLAND EMERGENCY EVACUATION. No new development shall be authorized on any barrier island

where the evacuation time for the existing population of residents and visitors during the hurricane season exceeds the anticipated warning period.

E. FRESHWATER WETLANDS. In addition to their role in water quality maintenance, freshwater wetlands serve as habitats for animal and plant species, provide important scenic values to the landscape and provide flood storage capacity. In order to protect and preserve freshwater wetlands, it is necessary that all development be prohibited in the wetlands except for wildlife management structures, elevated walkways, elevated roads and bridges and utility transmission facilities, provided that the direction, rate and volume of water movement is not altered, and that surface water body buffers are provided around all freshwater wetlands.

F. WILDLIFE HABITATS. The preservation and protection of wildlife habitat is an identified objective of the State Planning Act and is an important measure of general environmental integrity in the State. There are a variety of areas that serve as wildlife habitats ranging in importance from valuable to critical.

1. RESTRICTED POPULATION AREAS. Those areas that are designated as habitats to "restricted populations" on Figure 3 are areas of major wildlife habitats in the State of New Jersey, including areas that serve as critical habitat for state rare and endangered species. In order to preserve these areas it is necessary that the areas be protected by prohibiting all development or other use of these areas through acquisition or other prohibitory management technique.

2. HIGH CONCENTRATIONS OF RARE AND ENDANGERED WILDLIFE SPECIES. Areas which are designated as "High Concentrations of Rare and Endangered Wildlife Species" on Figure 5 are of sufficient importance to require that no development be authorized in these areas, unless the applicant prepares a wildlife conservation plan demonstrating that the proposed development activity will not substantially affect the survival of the species or any discrete population of the species. A wildlife conservation plan shall include an assessment of the habitat needs of the animals that would be affected by development and demonstrate that conservation and wildlife management programs that ensure that there will be no net loss of individuals over time are funded and will be implemented.

3. AGRICULTURAL LANDS HABITATS. In the areas designated as agricultural wildlife habitats, the "grasslands" on Figure 5, it is necessary that development activity be

# Environmental Management Areas

- Watersheds of Existing and Potential Reservoirs
- High Concentrations of Rare and Endangered Wildlife Species
- Grassland
- Pine-lands
- Woodland
- Coastal
- Areas of Medium Frequency of Occurrence of Unique Species
- Water Supply Critical Areas

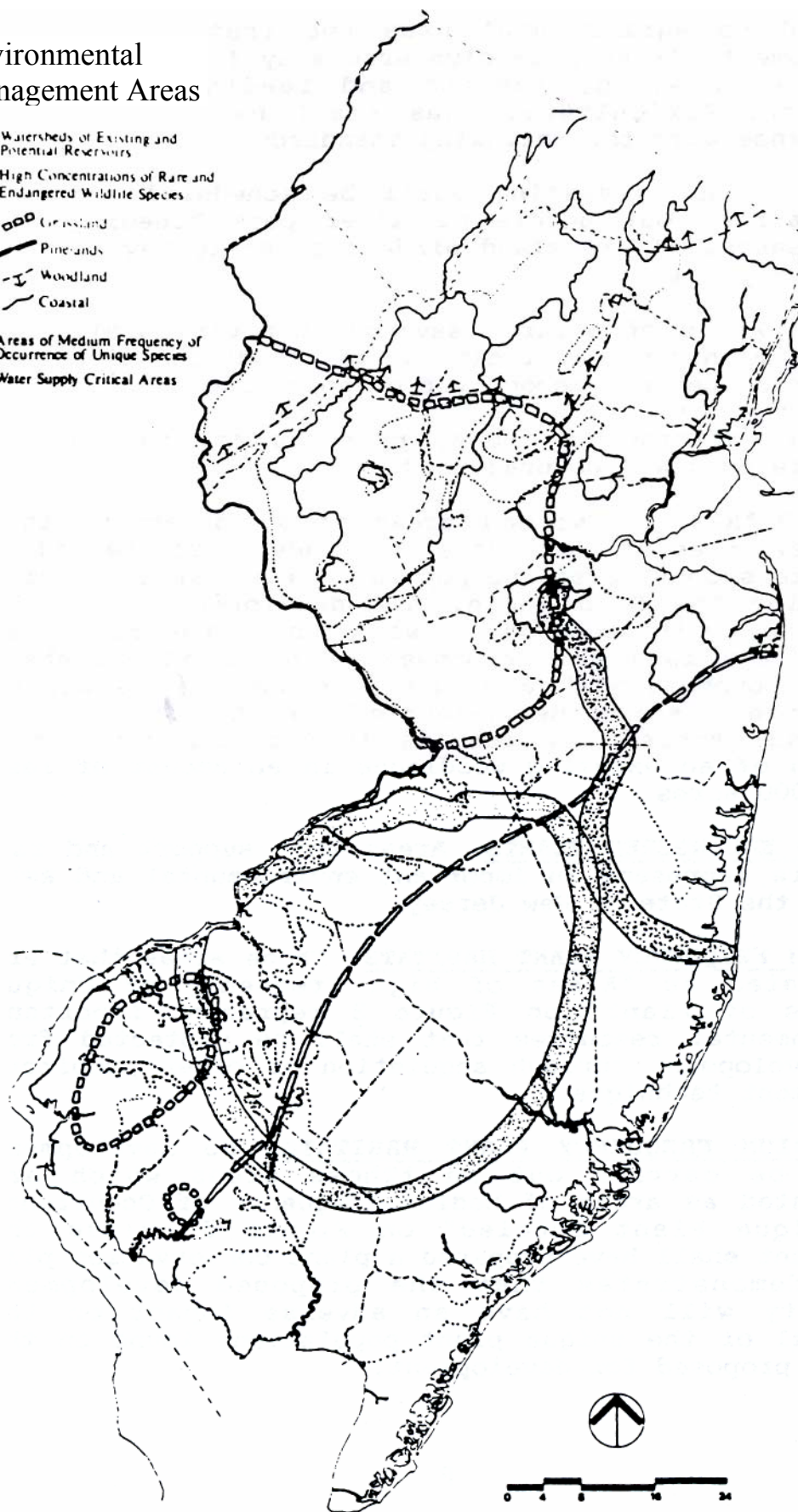


Figure 5

limited to agricultural uses and that residential development, if any, be clustered away from areas that serve as nesting, resting and feeding areas for wildlife. Agricultural uses shall be conducted in accordance with the following standards:

- a) Crop harvesting shall be scheduled and carried out before or after peak breeding seasons of grassland birds from early May to early July;
- b) Areas of natural savannah habitats shall be maintained in their natural condition as a break between monocultured crops; and
- c) Rotation of crops, pastures and fallow fields shall be practiced.

4. WOODLANDS. In wooded areas it is necessary that large expanses of contiguous woodlands be maintained in order to support breeding populations of large raptors, including the Bald Eagle. All development shall be clustered to the edge of the woodlands and no more than 75% of any land area proposed to be developed shall have a boundary with a naturally occurring forest. No development shall be permitted in the forested or woodlands areas that results in the isolation of a portion of an existing woodlands in an amount of less than 1000 acres.

G. RARE AND ENDANGERED PLANTS. Areas that support and rare and unique plants represent an important environmental and aesthetic resource to the State of New Jersey.

1. HIGH FREQUENCY PLANT HABITATS. Those areas that are designated as "Areas of High Frequency of Unique Species of Plant" on Figure 3 represent important environmental resources that shall be protected from all development through acquisition or other probitory management technique.

2. MEDIUM FREQUENCY PLANT HABITATS. No development shall be carried out in those areas which are designated as areas of Medium Frequency of Occurrence of Unique Plant Species" on Figure 5 unless the applicant shall have prepared a plant conservation plan that demonstrates that the proposed development activity will not have an adverse impact on the survival of the unique plant populations found on the parcel proposed for development.

H. FLOODPLAINS. In order to maintain available flood storage capacity and avoid the flooding of property, it is necessary to prohibit all development in any designated floodway and to prohibit all development in the flood fringe unless compensatory storage is provided that is equal to at least 110% of the flood storage capacity that is obstructed or filled by the development activity.

I. SCENIC CORRIDORS. A critical element in the economic prosperity of the State of New Jersey is the attractiveness of the State to residents and visitors. An important part of this attractiveness is the visual character of roadsides and waterways through the undeveloped parts of the State. As development of the State continues, it is important that the "strip" development that lines much of U.S. 1 is not allowed to extend along the roadways in the State and that development does not intrude upon the scenic values of the State's waterways. All development along designated scenic corridors shall be set back at least 200 feet from the right-of-way from the road or the high water line of the waterway. In the event that geophysical circumstances or existing development make it practically impossible to comply with the 200 foot requirement, then development may be located within 200 feet of the road right-of-way or waterway, provided that the development is set as far back from the road as practicable and the area is landscaped with native plants so as to mitigate the impact of the view from the road of any structure that is located within 200 feet of the road right-of-way. All arterial roads and all waterways with a water surface width of greater than 50 feet which are located in Areas 6,7 or 8 shall be considered scenic corridors until a comprehensive scenic corridor is prepared and incorporated in the State Development and Redevelopment Plan.

J. ON-SITE DEVELOPMENT STANDARDS. All development in Conservation and Open Space and Agricultural Areas shall meet the following development performance standards:

- a) All point and non-point discharges shall meet established water quality standards prior to reaching the boundary of any parcel of land or any surface body of water.
- b) All development shall provide for 100% on-site retention of the net increase in surface water runoff that is created by the development.
- c) All development in the Future Urbanized Area, Agricultural Areas and Conservation and Open Space Areas shall be designed and located so as to preserve the maximum amount of natural vegetation on each development site and in no case shall more than the area



needed to provide a building pad, required off-street parking and accessways be cleared of natural vegetation.

d) No development shall be authorized that involves the clearing or destruction of specimens of plants that are listed as threatened or endangered by any state or federal program, unless the development approval includes an approved plan of plant conservation or transplantation of the specimens.

e) No development other than single family detached dwellings shall be located on lands with slopes in excess of 10% and no development other than recreation, open space and wildlife management shall be located on lands with slopes in excess of 25%.

II. IMPLEMENTATION. In order to implement the environmental management programs in this Plan, there are a series of implementation programs that need to be adopted by local government and the State of New Jersey.

A. LOCAL LAND USE REGULATIONS. Most of the environmental programs involve the incorporation of development performance standards in local land use regulations. In order for counties and municipalities to implement the environmental programs established in the State Development and Redevelopment Plan, it will be necessary for municipalities which do not have appropriate existing regulations to amend their local regulations to incorporate the standards. The development standards that should be incorporated in local land development regulations include:

- 1) regulatory standards governing the use and disposal of potentially hazardous or toxic household products;
- 2) regulatory standards imposing a surface water body buffer requirement for all non-water dependent uses;
- 3) regulatory standards prohibiting discharges in Trout Watersheds that would result in elevated temperatures in receiving waters;
- 4) regulatory standards prohibiting on-site wastewater treatment systems, hazardous and toxic material use and underground storage of petroleum products in aquifer recharge areas;
- 5) regulatory standards encouraging attainment of ambient air quality standards and providing development criteria favoring development that involves affirmative air quality impact mitigation programs;
- 6) regulatory programs prohibiting all development in freshwater wetlands;
- 7) regulatory standards preserving minimum wildlife habitat areas in conservation and open space areas;
- 8) regulatory standards requiring 110%

compensatory storage for all development in designated floodways;

9) regulatory standards requiring scenic corridor setbacks; and

10) adoption of on-site development standards governing the clearing of natural vegetation, steep slopes, on-site wastewater treatment facility installation and maintenance.

B. INTERGOVERNMENTAL AGREEMENTS BETWEEN CONTIGUOUS LOCAL GOVERNMENTS. The management of land use to conserve and protect environmental values requires that adjacent municipalities employ consistent land management programs -- otherwise the efforts of one municipality may be undone by an adjacent municipality's inconsistent actions. In an ideal situation adjacent municipalities, perhaps in conjunction with counties or advisory regional agencies would enter into intergovernmental compacts binding themselves to the implementation of a coordinated set of environmental land management strategies. The State Planning Commission and the Office of State Planning should provide technical assistance in the design of intergovernmental compacts and in the preparation of environmental land management strategies.

C. STATE AGENCY ACTION. There are a number of programs that require that state agency programs be modified to incorporate the development standards contained in the State Development and Redevelopment Plan, but these modifications do not involve additional legislative action.

1. CRITICAL GROUNDWATER MANAGEMENT AREAS. The Department of Environmental Regulation should amend its critical areas program to ensure that ground water withdrawals do not exceed the recharge capacity of the aquifer. In addition, the DEP, or appropriate regional entities or counties, should undertake a specific modeling effort on an aquifer by aquifer basis to develop specific development standards for water budget maintenance in the critical areas for all development and water withdrawal activities.

2. FRANCIS E. WALTER DAM PROJECT. This project should be given priority in order to relieve withdrawal pressure on the water supply critical areas.

3. SOLE SOURCE AQUIFER DESIGNATION. All possible steps should be taken by all agencies of State government to support the designation of the entire State of New

Jersey as a sole source aquifer under the Federal Safe Water Drinking Act.

4. **AQUIFER RECHARGE AREAS.** The Department of Environmental Regulation should undertake a study of the location and extent of aquifer recharge areas and should identify specific areas where land use and material use should be prohibited or limited.

5. **UPGRADE OF WASTEWATER TREATMENT PLANTS.** All state agencies should support the improvement of treatment capacity of existing sewage treatment facilities throughout the State.

6. **AIR QUALITY.** The Department of Environmental Protection should establish an air quality/land use model that describes the relative impacts of various intensities, patterns and distributions of land use on air quality. The model should be based on existing land uses and should provide the information needed for the implementation of an air quality mitigation strategy as a part of the capital improvements planning and development review processes.

7. **SCENIC CORRIDORS.** The Department of Transportation and the Department of Environmental Protection should join together in the preparation of a survey of scenic corridors in the State of New Jersey. The survey should be based on the following conditions or characteristics:

- a) percentage of the frontage along the corridor that is developed;
- b) the extent to which existing development along the corridor is located within 200 feet of the road right-of-way;
- c) the presence of mature woodlands;
- d) the presence of overwater views along the corridor; and
- e) the presence of historic or cultural landmarks along the corridor.

Upon completion of the survey, it shall be considered by the State Planning Commission and if consistent with the goals, objectives and strategies of this Plan, the Commission will amend the Plan to implement the Environmental Resources Management programs.

D. NEW PROGRAMS. While existing law is generally adequate to support the implementation of the environmental elements of this State Development and Redevelopment Plan, there are additional programs that could improve efficiency and effectiveness.

1. EXPANDED JURISDICTION FOR CAFRA. It is generally agreed that the procedural and substantive programs within the CAFRA Jurisdiction have been very successful and that the principal shortcoming of this management program is the jurisdictional provision that exempts developments of a certain size from CAFRA jurisdiction. In order to implement the goals, policies and objectives of the State Development and Redevelopment Plan, CAFRA jurisdiction should be amended so that it covers all development in the coastal zone, regardless of its size.

2. REGIONAL LAND MANAGEMENT. It is clear from the background studies and the goals, policies and objectives of this Plan, that environmental resources do not follow municipal boundaries: streams course through multiple jurisdictions and air pollutants emitted in one municipality pollute the air of adjacent municipalities. One management response to this circumstance is the establishment of a regional land management program that provides a regional, or systems perspective to land use planning and decision-making. In New Jersey, the Pinelands Commission represents the prototype of a successful regional land management program, not only for the State, but for the Nation. Where there are identifiable areas with greater than local land management needs, the Pinelands model offers an efficient and highly effective means of ensuring that state and regional interests are reflected in land management decisions.

The Conservation and Open Space Areas mapped on Figure 3 suggest an area that could justify a regional land management strategy – an area in the extreme northwest portion of the State. The area is sometimes referred to as the "Skylands" or the "Highlands" and is described in Figure 6. The Conservation and Open Space designation demonstrates the presence of many environmental values in the area that extend beyond the boundaries of a single municipality. If the municipalities in the area are unable to establish, either individually or through intergovernmental compacts, a coherent set of land management programs

Skylands

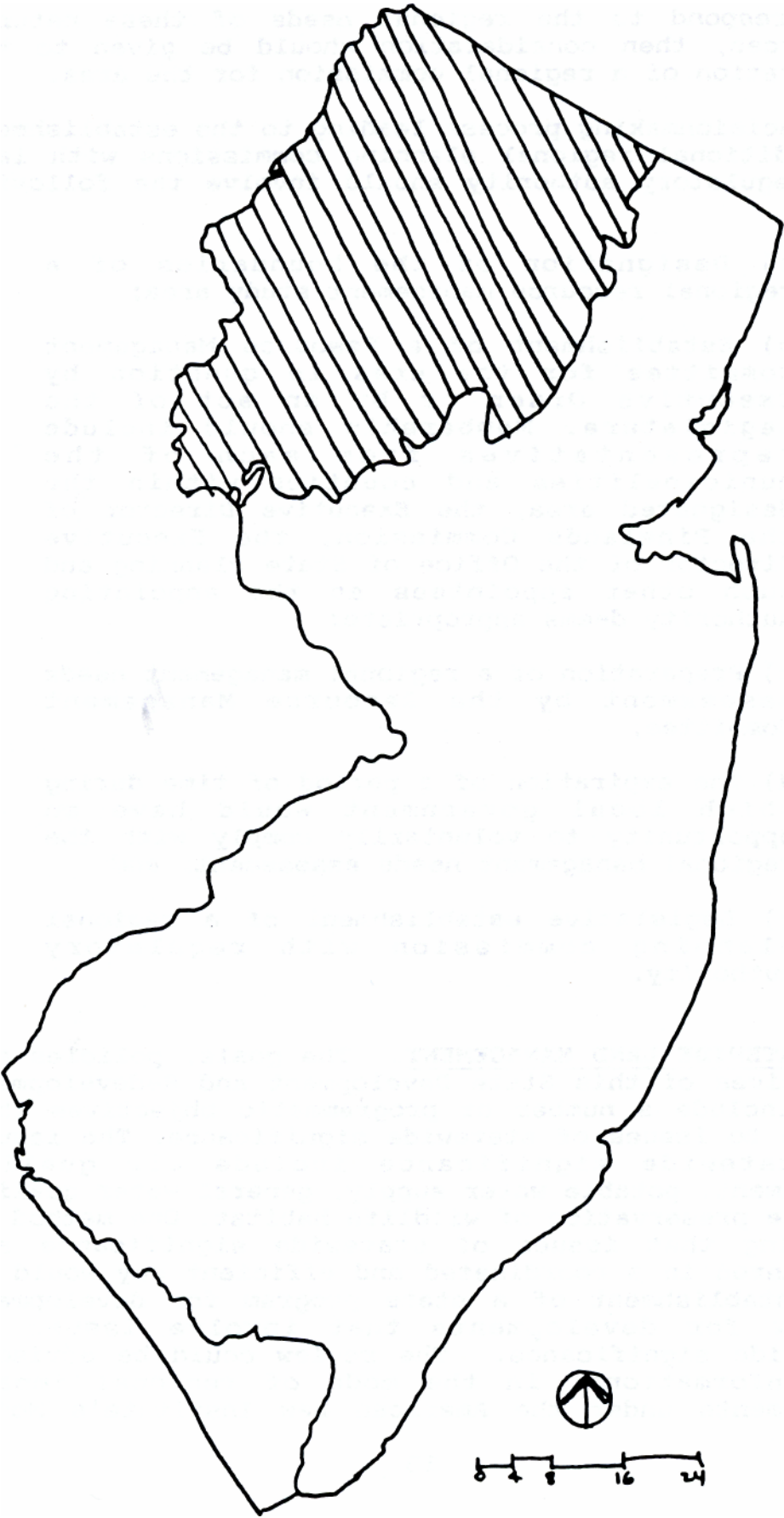


Figure 6

that respond to the regional needs of these natural resources, then consideration should be given to the preparation of a regional commission for the area.

The decision-making process leading to the establishment of additional regional planning commissions with land use regulatory authority should involve the following steps:

- a) Designation of the boundaries of a regional resource management study area;
- b) Establishment of a Resource Management Committee for the area in question by Executive Order or by an act of the Legislature. Membership should include representatives from each of the municipalities and counties within the designated area, the Executive Director of the Pinelands Commission, the Executive Director of the Office of State Planning and such other appointees as the appointing authority deems appropriate;
- c) Preparation of a regional management needs assessment by the Resource Management Committee;
- d) The expiration of a period of time during which local government would have an opportunity to voluntarily comply with the regional management needs assessment; and
- e) Legislative establishment of a regional planning commission with regulatory authority.

3. STATEWIDE LAND MANAGEMENT. The goals, policies and objectives of this State Development and Redevelopment Plan include a number of programmatic objectives that relate to issues of statewide significance. The issues of statewide significance include air quality attainment, potable water supply, general water quality and the preservation of wildlife habitat. One method of ensuring that issues of statewide significance are considered in a coordinated and efficient way would be the establishment of a state program for development review for developments that involve issues of statewide significance. The review could be advisory and informational in the mode of regional impact assessments under the American Law Institute's Model



Land Development Code and the National Environmental Policy Act; or the review could be regulatory as in power plant siting acts around the country and developments of regional impact in Florida. Jurisdiction could be predicated on size, location, areas of special concern or character and could involve any number of variations on the theme of statewide input into local decisions to direct review by a state agency. For example, developments with an ozone generation quotient that exceeds a certain level would be subject to an additional state review before development could proceed, providing an incentive to reduce ozone emitting characters from a project and providing for state review of a subject matter which is of critical statewide significance. The development of regional impact concept in the American Law Institute's Model Land Development Code may serve as a useful model for the development of a development review structure in the event a statewide development review program is to be implemented.

*13 b*

# Housing Management Standards

**DRAFT**

*Technical Reference Document #13 b*

**April 16, 1987**

*prepared by:*

Siemon, Larsen, Mattlin & Purdy  
200 South Wacker Drive  
Chicago, IL 60606

STATE  
D E V E L O P M E N T  
and  
R E D E V E L O P M E N T  
PLAN

One of the principal objectives of the State Planning Act is the replacement of the State Development Guide Plan with the State Development and Redevelopment Plan to serve as a tool for assessing locations and needs for housing in the State. In particular the State Development and Redevelopment Plan is required by section 5(d) to "[i]dentify areas for growth, limited growth, agriculture, open space conservation and other appropriate designations...", designations that are significant in terms of the New Jersey judicial precedents in regard to affordable housing and the Fair Housing Act.

"every municipality in a growth area has a constitutional obligation to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families."

South Burlington County NAACP v. Mount Laurel, 67 N.J. 151 (1975)

Under the Fair Housing Act the Council on Affordable Housing is obligated to "[e]stimate the present and prospective need for low and moderate income housing at state and regional levels." In preparing those estimates the Council used the State Development Guide Plan (because there was not yet a State Development and Redevelopment Plan) as a part of the data base for calculating estimated housing needs. When the State Development and Redevelopment Plan becomes effective, there is the potential for conflict between the growth area designations in the State Development Guide Plan and the housing estimates based on those growth areas and the growth area designations in the State Development and Redevelopment Plan.

In order to meet the goals, objectives, and policies of the Plan, the State Planning Act and the Fair Housing Act, it is necessary that the State Development and Redevelopment Plan provide for an efficient and effective transition from the housing needs allocations based on the State Development Guide Plan to allocations based on this Plan.

The State Development and Redevelopment Plan divides the State into a series of areas: Areas 1 and 2 represent developed and declining areas; Areas 3 and 4 include immediate growth areas; Area 6 is an area of future growth and development; Area 7 is made up of agricultural lands, some of which may be converted to growth tiers at some time in the future and Area 8 is comprised of conservation and open space lands. In many areas, the designations of policy areas in this Plan do not coincide with the prior designations of growth areas in the State Development Guide Plan because of the State Planning Commission's

rejection of existing growth trends as an acceptable land use pattern. Therefore it will be necessary for the Council on Affordable Housing to consider whether the provisions of the Fair Housing Act require any adjustment to state and regional housing needs or to the illustrative municipal allocations that serve as a basis for certification of municipal housing elements.

A. APPLICATION OF STATE DEVELOPMENT & REDEVELOPMENT PLAN TO FAIR HOUSING ACT

The State Development and Redevelopment Plan should be applied to programs under the Fair Housing Act in the context of the following standards:

1) The adoption of the State Development and Redevelopment Plan is not intended nor shall it have any effect on the Council on Affordable Housing estimates of present low and moderate income housing needs in any region of the state.

2) In regard to municipalities in Areas 1 through 6 who have their housing elements certified prior to the effective date of the State Development and Redevelopment Plan, the shift in growth projections resulting from this Plan shall not be applicable to estimates of prospective low and moderate income housing needs in the municipality until 1993.

3) In regard to municipalities in Policy Areas 1 through 6 who have not received certification of their housing elements prior to the effective date of this Plan, the population projections of this Plan shall be applicable to estimates of prospective housing needs unless the Council on Affordable Housing determines that a shift in projections will result in the material disruption of the implementation of a previously prepared and submitted housing element which, while not yet certified, appears to contain all the required elements and is determined to serve the spirit and intent of the Fair Housing Act and the Mt. Laurel precedents.

4) In regard to municipalities in Areas 6 and 8 the State Development and Redevelopment Plan shall override any designation of a growth area in the State Development Guide

## **Plan in regard to prospective low and moderate income housing needs.**

### **B. DEVELOPMENT STANDARDS**

The provision of low and moderate income housing in close proximity to jobs, shopping opportunities and public amenities is essential to sustaining the State of New Jersey's economic growth and development. The Fair Housing Act establishes a definite program implementing the Mt. Laurel principles and, if that program is responsibly implemented by local government, will substantively meet the goals, policies and objectives of this Plan.

In order to achieve the goals, policies and objectives of the Mt. Laurel principles, the Fair Housing Act, the State Planning Act and this Plan, it is necessary that:

- 1) State, county and municipal governments establish capital facilities improvement priorities for the development of low and moderate income housing in Areas 1 through 6. Where funding is inadequate or inadequate facilities are available to serve the facilities needs of all growth and development opportunities, priority shall be given to those capital improvements that will provide low and moderate income housing.
- 2) No commercial, office or industrial development in Areas 3, 4, 5, or 6 except in previously approved developments or subdivisions shall be authorized unless and until adequate measures are implemented to ensure that low and moderate income housing will be available to the employees of such development. A certified housing element or legally enforceable development commitment to provide low and moderate income housing shall be deemed adequate measures.
- 3) The development limitations imposed by the State Development and Redevelopment Plan in regard to the conservation of agricultural lands and the linkage between development and the acquisition of agricultural easements, shall not apply to the development of low and moderate income housing or to non-residential development involving a legally enforceable developer commitment to provide low and moderate income housing.
- 4) The development of low and moderate income housing shall not be subject to the air quality limits on development in the State Development and Redevelopment Plan.

## C. HOUSING IMPLEMENTATION

1. Fair Housing Act. The Council on Affordable Housing has provided local government with an outline of appropriate housing elements to be submitted for certification by the Council. Many of the elements of these housing plans will contain strategies and techniques for achieving the goals of the Fair Housing Act which will also achieve the goals and objectives of the State Development and Redevelopment Plan.

2. Municipal Programs. In addition to the techniques imposed by the Council on Affordable Housing there are a number of additional programs that should be implemented by Local Government.

a. Elimination of Disincentives. In order to achieve the goals, objectives and policies of the State Plan, it is necessary that all municipal land development regulations be amended to eliminate any land use regulations, financing or taxation mechanisms or other techniques or practices which threaten the maintenance of the availability of existing housing stock for low and moderate income persons.

b. Elimination of Overzoning. A traditional land planning and economic revitalization strategy involves the overzoning of areas with deteriorated housing stock in hopes of stimulating development and redevelopment. The difficulty is that the replacement of this housing stock, notwithstanding its deteriorated condition compounds the present and prospective housing needs of the State.

- \* In order to ensure that economic development and redevelopment programs do not exacerbate the present and prospective housing needs of the State, each municipality should carry out a comparative analysis of existing residential uses and existing zoning and where existing residential uses are overzoned for more intense residential uses or for non-residential use, the zoning shall be amended to conform to existing residential density and character, with a reasonable allowance for infill and replacement development, unless the municipality has implemented a specific housing program that provides

replacement housing on a one for one basis at comparable cost for all overzoned housing.

**c. Innovative Technology.** To further implement the housing goals and objectives, the Plan requires local government to analyze its policies and regulations to ensure that any impediment is removed to the utilization of wider use of state-of-the-art housing technology and establish programs to facilitate the rehabilitation of existing housing.